

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rolando Vasquez	Team: Squad #5	CCRB Case #: 201707428	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Monday, 05/08/2017 9:15 PM	Location of Incident: Howard Avenue and Campus Road	Precinct: 120	18 Mo. SOL 11/8/2018	EO SOL 11/8/2018	
Date/Time CV Reported Wed, 05/10/2017 1:15 PM	CV Reported At: IG NYPD	How CV Reported: E-mail	Date/Time Received at CCRB Mon, 09/11/2017 8:33 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Joseph Franzese	15018	960554	120 PCT
2. POM Aaron Espada	09222	953235	120 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Jihad Shahin	10451	956256	120 PCT
2. POM Vincent Giuliano	19020	958637	120 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Aaron Espada	Force: Police Officer Aaron Espada used physical force against § 87(2)(b)	
B.POM Aaron Espada	Discourtesy: Police Officer Aaron Espada spoke discourteously to § 87(2)(b)	
C.POM Joseph Franzese	Abuse: Police Officer Joseph Franzese refused to provide his name to § 87(2)(b)	
D.POM Aaron Espada	Off. Language: Police Officer Aaron Espada made remarks to § 87(2)(b) based upon race.	
E.POM Aaron Espada	Force: Police Officer Aaron Espada used physical force against § 87(2)(b)	
F.POM Aaron Espada	Abuse: Police Officer Aaron Espada threatened § 87(2)(b) with the use of force.	

### Case Summary

This complaint was filed by § 87(2)(b) on May 10, 2017 by e-mail with the Office of the Inspector General. The complaint was received by the CCRB on September 11, 2017.

On May 8, 2017, at approximately 9:15 p.m., § 87(2)(b) and § 87(2)(b) were involved in a vehicle accident in the vicinity of Howard Avenue and Campus Road in Staten Island. PO Aaron Espada and PO Joseph Franzese of the 120<sup>th</sup> Precinct responded to the incident. PO Espada allegedly pushed § 87(2)(b) while the officers were obtaining statements. **(Allegation A – Force, § 87(2)(g))** PO Espada allegedly told § 87(2)(b) to “shut the fuck up” and “I don’t give a fuck” **(Allegation B – Discourtesy, § 87(2)(g))** § 87(2)(b) asked PO Franzese for his name and he allegedly refused to provide it to her **(Allegation C – Abuse of Authority, § 87(2)(g))** § 87(2)(b) was reportedly found with an open warrant after the officers ran his name to issue him a summons. § 87(2)(b) asked for a larger vehicle to transport him to the stationhouse. PO Espada allegedly said, “No, you fucking spic. The NYPD doesn’t buy fucking paddy wagons. Why do you keep asking for a fucking paddy wagon?” **(Allegation D – Offensive Language, § 87(2)(g))** **additional discourtesies subsumed under Allegation B).** PO Espada pushed § 87(2)(b) to get him into the backseat of the car **(Allegation E – Force, § 87(2)(g))** PO Espada allegedly threatened § 87(2)(b) with the use of force by saying, “I’m gonna call boss and boss is going to come down here and Tase you. I’m going to shoot you in the back of the head and I’m going to lay you out on the back fucking seat” **(Allegation F – Abuse of Authority, § 87(2)(g))** **additional discourtesy subsumed under Allegation B).** § 87(2)(a) 160.50  
§ 87(2)(b)

There is no video evidence of this incident.

### Findings and Recommendations

**Allegation A – Force: Police Officer Aaron Espada used physical force against § 87(2)(b)**

**Allegation B - Discourtesy: Police Officer Aaron Espada spoke discourteously to § 87(2)(b)**

**Allegation C – Abuse of Authority: Police Officer Joseph Franzese refused to provide his name to § 87(2)(b)**

**Allegation D – Offensive Language: Police Officer Aaron Espada made remarks to § 87(2)(b) based upon race.**

§ 87(2)(b) testified that he was the passenger in § 87(2)(b) vehicle which was involved in a traffic accident (BR01). § 87(2)(b) flagged down PO Espada and PO Franzese. While everyone was speaking with PO Franzese about what occurred, PO Espada interjected himself into the interaction. § 87(2)(b) was pointing at scratches on the other vehicle and had been completely calm. PO Espada came over, grabbed § 87(2)(b)'s right hand and said, “Shut the fuck up. Stop talking.” § 87(2)(b) pulled away and complained about why he was being touched and spoken to in this manner. PO Espada grabbed § 87(2)(b)'s right hand again, pulled it toward him, and then pushed his hand back toward § 87(2)(b). PO Espada told § 87(2)(b) to go back to his car. § 87(2)(b) complied in doing so. § 87(2)(b) denied that

he was ever obstructing traffic. Later, PO Espada told § 87(2)(b) that he had to be brought to the stationhouse because he had an open warrant. § 87(2)(b) was handcuffed and brought to PO Espada's car for transport. § 87(2)(b) is 6'2" tall and weighs § 87(2)(b). § 87(2)(b) complained that he would not fit in PO Espada's car and asked for a van to pick him up. PO Espada said, "No, you fucking spic. You're getting in here now. The NYPD doesn't buy fucking vans. We don't have no fucking vans over here. What fucking paddy wagon? Why do you keep asking for a fucking paddy wagon? I should smack you in the back of the fucking head."

§ 87(2)(b) testified that she was very irate because the accident was the fault of the driver of the other car (BR02). § 87(2)(b) remained in her car while § 87(2)(b) dealt with the police because she was irate. Suddenly, § 87(2)(b) heard screaming behind her. PO Espada said to § 87(2)(b) "Get the fuck back to your car." PO Espada grabbed § 87(2)(b)'s right elbow and pushed him. § 87(2)(b) asked the officer why he was pushing him. PO Espada said, "I don't give a fuck. Get the fuck back to your car." § 87(2)(b) walked back toward her car. PO Franzese came and spoke with § 87(2)(b) about the accident. § 87(2)(b) asked PO Franzese for his name. PO Franzese said it would be on the report and he never gave it to her. Later while he was trying to get § 87(2)(b) into the police car, PO Espada said, "I will fucking tase you. Fucking spic. Get the fuck in the back of the seat."

The police accident report associated with this incident identified § 87(2)(b) as the driver of the other vehicle involved in this incident (BR03). This document also identified § 87(2)(b) as the passenger of the vehicle. Phone call attempts and letters were mailed to these individuals based on contact information discovered on the accident report and various database searches (BR16). § 87(2)(b) and § 87(2)(b) did not respond to these contact attempts. Thus, no witness statements could be obtained from them.

PO Espada testified that § 87(2)(b) and § 87(2)(b) were separated from § 87(2)(b) and § 87(2)(b) in order to facilitate obtaining everybody's statement (BR04). While PO Espada tried getting the story from § 87(2)(b) and § 87(2)(b) interjected himself into the conversation and called § 87(2)(b) a liar. PO Espada instructed him to return to his car and he complied. However, § 87(2)(b) returned and continued accusing § 87(2)(b) of being a liar. PO Espada told § 87(2)(b) to return to his car and he refused. PO Espada placed his hand on § 87(2)(b)'s elbow and began pulling him, without using much force, back toward his car. § 87(2)(b) pulled his arm away from PO Espada and backed into the street which caused him to block vehicular traffic. PO Espada informed § 87(2)(b) he was being disorderly and asked for his ID. § 87(2)(b) provided his ID and returned to his car. § 87(2)(b)'s name was run and he had an open warrant. § 87(2)(b) was placed into custody and PO Espada attempted to get § 87(2)(b) into the police car. § 87(2)(b) complained that he would not fit in the car. PO Espada accommodated § 87(2)(b) by moving the seats forward so that he would have room. § 87(2)(b) eventually complied in getting into the back of the police car. PO Espada denied that he made any of the alleged remarks and denied that he used any profanity toward § 87(2)(b).

PO Franzese testified that § 87(2)(b) asked her questions about how to obtain an accident report (BR05). PO Franzese answered these questions. PO Franzese denied that § 87(2)(b) ever asked him for his name and denied that he ever refused to provide this information to her. PO Franzese

testified that PO Espada never made any physical contact with § 87(2)(b) before the time he was being placed in the back of the police car. § 87(2)(b) repeatedly screamed, “Don’t touch me” during the incident even though nobody made any physical contact with him. After backing into the street and obstructing traffic, § 87(2)(b) complied with the officers’ instructions to get out of the way. PO Franzese denied that PO Espada used any force against § 87(2)(b). PO Franzese denied that PO Espada made any of the alleged remarks and denied that he used any profanity toward § 87(2)(b) during this incident.

PO Jihad Shahin and PO Vincent Giuliano both provided the following consistent testimony (BR06-07). The officers responded to the incident in response to a request for an additional unit. Upon arriving, § 87(2)(b) was already under arrest. PO Espada and PO Franzese were trying to get § 87(2)(b) into their car. Both officers denied that any force was used against § 87(2)(b). Both officers denied that PO Espada used any profanity toward § 87(2)(b). Neither officer recalled any interaction between PO Franzese and § 87(2)(b). Both officers denied observing PO Franzese refuse to provide his name and shield number to her.

PG 221-01 states that force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances (BR08).

PG 203-09 states that officers must be courteous and professional in their conduct with the public. PG 203-09 also states that officers must courteously and clearly state their name, rank, shield number and command upon request (BR09).

PG 203-10 prohibits officers from using discourteous or disrespectful remarks regarding an individual’s ethnicity, race, religion, gender, gender identity/expression, sexual orientation, or disability (BR10).

§ 87(2)(g)  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

§ 87(2)(g)  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Allegation E – Force: Police Officer Aaron Espada used physical force against § 87(2)(b)**

**Allegation F – Abuse of Authority: Police Officer Aaron Espada threatened § 87(2)(b) with the use of force.**

§ 87(2)(b) testified that PO Espada brought him to the back of the police car, a Chevy Impala. § 87(2)(b) repeatedly asked for a van because he was not going to fit in the back of the car.

PO Espada had a hold on § 87(2)(b)'s hands which were handcuffed and behind his back. PO Espada pushed his hands to try and force him into the car. § 87(2)(b) was not doing anything physically while PO Espada was trying to get him into the car aside from verbally saying that he was not going to fit. PO Espada said, "I should smack you in the back of the fucking head." PO Espada asked PO Franzese if he had his taser. When PO Franzese said that he did not, PO Espada said to § 87(2)(b) "I'm gonna call boss and boss is going to come down here and tase you." PO Espada continued, "I'm going to shoot you in the back of the head and I'm going to lay you out on the back fucking seat." § 87(2)(b) complained about these threats and pain that PO Espada was causing him before finally acquiescing and getting into the back seat of the police car.

§ 87(2)(b) reported that he sustained numbness, swelling, and pain to his wrists from being handcuffed. § 87(2)(b) sustained back pain that was associated with the vehicle accident. § 87(2)(b) was treated at § 87(2)(b) following the incident and the next day at § 87(2)(b). The records from § 87(2)(b) revealed that § 87(2)(b) complained only of back pain and he was diagnosed with a muscle strain and acute chronic back pain (BR11). The records from § 87(2)(b) revealed § 87(2)(b) complained of injuries to his wrist and was diagnosed with wrist pain and inflammation of his wrist (BR12).

§ 87(2)(b) testified that PO Espada pushed § 87(2)(b) in the back while § 87(2)(b) was asking for a bigger car. § 87(2)(b) stiffened his body because he was not going to fit in the car. PO Espada told him, "Stop resisting" and § 87(2)(b) continued saying that he would not fit in the car. PO Espada said, "Don't make me take the taser out. I will fucking tase you. Fucking spic. Get the fuck in the back of the seat. Don't make me take my gun out and shoot you. I'll punch you. I'll fight you." § 87(2)(b) ultimately bent over and entered the police car.

PO Espada testified that he pushed the seats up in his car because § 87(2)(b) complained he would not fit. § 87(2)(b) continued to refuse to get into the car. PO Espada pushed on § 87(2)(b)'s back to attempt to get § 87(2)(b) to enter the backseat of the car. § 87(2)(b) stood his ground and refused to enter the car. § 87(2)(b) is much larger than PO Espada. PO Espada is 5'5" tall and weighs 170 pounds. PO Espada estimated that § 87(2)(b) was 6'5" to 6'7" tall and weighed roughly 300 pounds. PO Espada believed that the officers would not have been able to overpower § 87(2)(b). As a means of gaining § 87(2)(b)'s compliance, PO Espada told him, "If you don't comply I'm going to have to call my supervisor and he might tase you. I don't know." § 87(2)(b) then complied and got into the police car. PO Espada denied that he made any of the alleged remarks and that he threatened § 87(2)(b) with the use of force in any other way.

PO Franzese testified that § 87(2)(b) was shaking his upper body when PO Espada brought him to the police car. The officers commanded him to calm down and he complied and entered the car.

PO Franzese, PO Shahin and PO Giuliano all denied that PO Espada threatened § 87(2)(b) with the use of force and that he used any force against § 87(2)(b) to get him into the car.

PG 221-01 states that force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances.

It is undisputed that § 87(2)(b) initially refused to comply to enter the back of the police car. § 87(2)(b) corroborated the officers' account that § 87(2)(b) was physically stopping himself from entering the car. § 87(2)(g)

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#### **Civilian and Officer CCRB Histories**

- This is the first complaint filed by § 87(2)(b) and § 87(2)(b) (BR13).
- PO Espada has been a member of the service for five years and has no substantiated allegations. PO Espada has one prior force allegation which was closed by the Board as Victim Uncooperative.
- PO Franzese has been a member of the service for one year and this is his first complaint.

#### **Mediation, Civil and Criminal Histories**

- This complaint was unsuitable for mediation because § 87(2)(b) stated his intent to file a lawsuit.
- The NYC Comptroller's Office responded to a request indicating no notice of claim has been filed by § 87(2)(b) or § 87(2)(b) (BR14).
- § 87(2)(b); §§ 86(1)(3)(4); § 87(2)(c)

Squad No.: 5

Investigator:	_____	_____	_____
	Signature	Print Title & Name	Date

Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date